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**BEFORE THE
PHYSICAL THERAPY BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. 1D 2003 63461

MICHAEL FREEMAN, P.T.A.
P.O. Box 5361
Pleasanton, CA 94566

A C C U S A T I O N

Physical Therapy Assistant License. AT 4997

Respondent.

Complainant alleges:

PARTIES

1. Steven K. Hartzell (Complainant) brings this Accusation solely in his official capacity as the Executive Officer of the Physical Therapy Board of California, Department of Consumer Affairs.

2. On or about January 15, 1998, the Physical Therapy Board of California issued Physical Therapy Assistant License Number AT 4997 to Michael Freeman, P.T.A. (Respondent). The Physical Therapy Assistant License was in full force and effect at all times relevant to the charges brought herein and will expire on July 31, 2005, unless renewed.

JURISDICTION

3. This Accusation is brought before the Physical Therapy Board of California (Board), Department of Consumer Affairs, under the authority of the following laws.

1 All section references are to the Business and Professions Code unless otherwise indicated.

2 4. Section 2609 of the Code states:

3 The board shall issue, suspend, and revoke licenses and approvals to practice
4 physical therapy as provided in this chapter.

5 5. Section 2660 of the Code states in relevant part:

6 The board may, after the conduct of appropriate proceedings under the
7 Administrative Procedure Act, suspend for not more than 12 months, or revoke, or impose
8 probationary conditions upon any license, certificate, or approval issued under this chapter for
9 unprofessional conduct that includes, but is not limited to, one or any combination of the
10 following causes:

11 “(d) Conviction of a crime which substantially relates to the
12 qualifications, functions, or duties of a physical therapist or physical therapy
13 assistant. The record of conviction or a certified copy thereof shall be conclusive
14 evidence of that conviction.”

15 (i) Conviction of a violation of any of the provisions of this chapter or of
16 the State Medical Practice Act, or violating, or attempting to violate, directly or
17 indirectly, or assisting in or abetting the violating of, or conspiring to violate any
18 provision or term of this chapter or of the State Medical Practice Act.

19 6. Section 2239 of the Code states:

20 “(a) The use or prescribing for or administering to himself or herself, of any
21 controlled substance; or the use of any of the dangerous drugs specified in Section 4022,
22 or of alcoholic beverages, to the extent, or in such a manner as to be dangerous or
23 injurious to the licensee, or to any other person or to the public, or to the extent that such
24 use impairs the ability of the licensee to practice medicine safely or more than one
25 misdemeanor or any felony involving the use, consumption, or self-administration of any
26 of the substances referred to in this section, or any combination thereof, constitutes
27 unprofessional conduct. The record of the conviction is conclusive evidence of such
28 unprofessional conduct.

1 “(b) A plea or verdict of guilty or a conviction following a plea of nolo
2 contendere is deemed to be a conviction within the meaning of this section. The Division
3 of Medical Quality may order discipline of the licensee in accordance with Section 2227
4 or the Division of Licensing may order the denial of the license when the time for appeal
5 has elapsed or the judgment of conviction has been affirmed on appeal or when an order
6 granting probation is made suspending imposition of sentence, irrespective of a
7 subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such
8 person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting
9 aside the verdict of guilty, or dismissing the accusation, complaint, information, or
10 indictment.”

11 7. Section 2661 of the Code states:

12 “A plea or verdict of guilty or a conviction following a plea of nolo contendere
13 made to a charge of a felony or of any offense which substantially relates to the qualifications,
14 functions, or duties of a physical therapist is deemed to be a conviction within the meaning of
15 this article. The board may order the license suspended or revoked, or may decline to issue a
16 license, when the time for appeal has elapsed, or the judgement of conviction has been affirmed
17 on appeal or when an order granting probation is made suspending the imposition of sentence,
18 irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing that person
19 to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict
20 of guilty, or dismissing the accusation, information, or indictment.”

21 8. Section 2661.5 of the Code states:

22 (a) In any order issued in resolution of a disciplinary proceeding before
23 the board, the board may request the administrative law judge to direct any
24 licensee found guilty of unprofessional conduct to pay to the board a sum not to
25 exceed the actual and reasonable costs of the investigation and prosecution of the
26 case.

27 (b) The costs to be assessed shall be fixed by the administrative law judge
28 and shall not in any event be increased by the board. When the board does not

1 adopt a proposed decision and remands the case to an administrative law judge,
2 the administrative law judge shall not increase the amount of the assessed costs
3 specified in the proposed decision.

4 (c) When the payment directed in an order for payment of costs is not
5 made by the licensee, the board may enforce the order of payment by bringing an
6 action in any appropriate court. This right of enforcement shall be in addition to
7 any other rights the board may have as to any licensee directed to pay costs.

8 (d) In any judicial action for the recovery of costs, proof of the board's
9 decision shall be conclusive proof of the validity of the order of payment and the
10 terms for payment.

11 (e) (1) Except as provided in paragraph (2), the board shall not renew
12 or reinstate the license or approval of any person who has failed to pay all
13 of the costs ordered under this section.

14 (2) Notwithstanding paragraph (1), the board may, in its
15 discretion, conditionally renew or reinstate for a maximum of one year the
16 license or approval of any person who demonstrates financial hardship and
17 who enters into a formal agreement with the board to reimburse the board
18 within that one year period for those unpaid costs.

19 (f) All costs recovered under this section shall be deposited in the
20 Physical Therapy Fund as a reimbursement in either the fiscal year in which the
21 costs are actually recovered or the previous fiscal year, as the board may direct.

22 9. Section 2669 of the Code states in relevant part:

23 “. . . participation in a diversion program shall not be a defense to any disciplinary action
24 which may be taken by the board. This section does not preclude the board from commencing
25 disciplinary action against a physical therapist or physical therapist assistant who is terminated
26 unsuccessfully from the program under this section. That disciplinary action may not include as
27 evidence any confidential information.”

28 10. Section 118 of the Code states:

1 “(a) The withdrawal of an application for a license after it has been filed with a
2 board in the department shall not, unless the board has consented in writing to such
3 withdrawal, deprive the board of its authority to institute or continue a proceeding against
4 the applicant for the denial of the license upon any ground provided by law or to enter an
5 order denying the license upon any such ground.

6 “(b) The suspension, expiration, or forfeiture by operation of law of a license
7 issued by a board in the department, or its suspension, forfeiture, or cancellation by order
8 of the board or by order of a court of law, or its surrender without the written consent of
9 the board, shall not, during any period in which it may be renewed, restored, reissued, or
10 reinstated, deprive the board of its authority to institute or continue a disciplinary
11 proceeding against the licensee upon any ground provided by law or to enter an order
12 suspending or revoking the license or otherwise taking disciplinary action against the
13 licensee on any such ground.

14 “(c) As used in this section, ‘board’ includes an individual who is authorized by
15 any provision of this code to issue, suspend, or revoke a license, and ‘license’ includes
16 ‘certificate,’ ‘registration,’ and ‘permit.’”

17 11. Section 125.3 of the Code provides, in relevant part, that the Board may
18 request the administrative law judge to direct a licentiate found to have committed a violation or
19 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
20 and enforcement of the case.

21 12. Section 490 of the Code states:

22 “A board may suspend or revoke a license on the ground that the licensee has
23 been convicted of a crime, if the crime is substantially related to the qualifications,
24 functions, or duties of the business or profession for which the license was issued. A
25 conviction within the meaning of this section means a plea or verdict of guilty or a
26 conviction following a plea of nolo contendere. Any action which a board is permitted to
27 take following the establishment of a conviction may be taken when the time for appeal
28 has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order

1 granting probation is made suspending the imposition of sentence, irrespective of a
2 subsequent order under the provisions of Section 1203.4 of the Penal Code.”

3 FIRST CAUSE FOR DISCIPLINE

(Conviction of a Crime)

4 [Bus. & Prof. Code Section 2660 (d)]

5 13. Respondent is subject to disciplinary action under section 2660 (d) in that
6 he was convicted of a crime substantially related to the qualifications, functions or duties of a
7 Physical Therapy Assistant. The circumstances are as follows:

8 14. On or about May 18, 2003, respondent was driving a motor vehicle (truck)
9 in Sacramento County, in or near an off-road recreation area at Prairie City, having come to the
10 area to observe a motorcycle race. Respondent consumed several beers during the course of the
11 race, prior to driving his truck. While driving his vehicle, Respondent was contacted by a park
12 ranger who determined, through a field sobriety test, that Respondent was under the influence of
13 alcohol. Respondent subsequently took a blood alcohol test, which revealed a blood alcohol
14 content (B.A.C.) of .12%. Respondent was arrested and charged with violating California
15 Vehicle Code sections 23152 (a) and (b) [Driving Under the Influence of Alcohol and Driving
16 with a Blood Alcohol level in excess of .08%]. On June 17, 2003, Respondent entered a plea of
17 “Nolo Contendere” in Superior Court for the County of Sacramento, Case No. 03T03140, to
18 violating Vehicle Code section 23152 (a) {Driving Under the Influence of Alcohol}. The second
19 count (Vehicle Code section 23152 (b) was dismissed “in the interests of justice”. Respondent
20 was sentenced to 48 hours incarceration, 3 years probation, a fine, suspended drivers’ license for
21 4 months, and attendance of an alcohol offender’s education and counseling program.

22 SECOND CAUSE FOR DISCIPLINE

(Use of Alcoholic Beverages As Dangerous/Injurious to Licensee)

23 [Bus. & Prof. Code Section 2239]

24 15. Complainant re-alleges paragraph 14, above, and incorporates it by
25 reference herein as if fully set forth at this point.

26 16. Respondent is subject to disciplinary action under Code section 2239 in
27 that he consumed alcohol to such an extent that he endangered himself and/or others by operating
28 a motor vehicle while under the influence of alcohol.

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3 THIRD CAUSE FOR DISCIPLINE
4 (Violation of Medical Practices Act)
[Bus. & Prof. Code Section 2660 (i)]

5 17. Complainant re-alleges paragraph 16, above, and incorporates it by
6 reference herein as if fully set forth at this point.

7 18. Respondent is subject to discipline under code section 2660 (i) in that he
8 violated code section 2239, a provision of the Medical Practices Act.

9 PRAYER

10 WHEREFORE, Complainant requests that a hearing be held on the matters herein
11 alleged, and that following the hearing, the Physical Therapy Board of California issue a
12 decision:

13 1. Revoking or suspending Physical Therapy Assistant License Number AT
14 4997, issued to Michael Freeman, P.T.A.;

15 2. Ordering Michael Freeman, P.T.A. to pay the Physical Therapy Board of
16 California the reasonable costs of the investigation and enforcement of this case, pursuant to
17 Business and Professions Code section 2661.5;

18 3. Taking such other and further action as deemed necessary and proper.

19 DATED: February 11, 2004 .
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24 Original Signed By:
25 STEVEN K. HARTZELL
Executive Officer
Physical Therapy Board of California
26 Department of Consumer Affairs
State of California
27 Complainant